

Fred I. Lewis  
Texans Together  
4509 Edgemont Drive  
Austin, TX 78731

Dear Mr. Lewis,

Thank you for your letter dated May 6, 2014, regarding the San Jacinto River Waste Pits Superfund Site (Site), in which you requested that the Environmental Protection Agency (EPA) Office of Inspector General (OIG) conduct an investigation, and that the EPA disregard the Remedial Investigation and Feasibility Study (RI/FS) Reports prepared by contractors engaged by the Potentially Responsible Parties (PRPs). Your May 6, 2014, letter was also addressed to the EPA OIG, and they may respond to your request for an investigation. Regarding your request that the RI/FS Reports be disregarded, the EPA and other agencies will continue their review and oversight of the draft RI/FS Reports, and will require modifications and/or revisions as necessary to meet the requirements for this work, and will therefore not disregard the drafts at this time.

Sections 104/122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) provide PRPs with the opportunity to conduct the RI/FS. It is the EPA's commitment to ensure that those who are responsible for hazardous waste sites take the lead in cleanup, when appropriate, throughout the Superfund cleanup process, including conduct of the RI/FS (EPA, OSWER 9355.2-21, 2005). The EPA's experience has shown that, with adequate oversight, the PRPs can perform acceptable RI/FSs. The RI/FS at the Site is being performed under the terms of a Unilateral Administrative Order (U.S. EPA Region 6, CERCLA Docket No. 06-03-10) issued on November 20, 2009. The EPA is performing oversight of the work performed by the PRPs and their consultants for this Site. In addition, the EPA is partnering with a number of other agencies to assist in performance of this oversight. The partner agencies include the Texas Commission on Environmental Quality (TCEQ), Harris County, and the Port of Houston Authority. The RI/FS is only acceptable if the EPA determines it to be so.

Regarding the selection of a remedial action for this or any other site, the selection is made by the EPA and documented in a Record of Decision document. The selection is determined based on the nine CERCLA criteria, and in consultation with the TCEQ and the Natural Resource Trustees, and in consideration of public comments received on the proposed remedial action. The PRPs do not select the remedial action for a site. Any recommendations by the PRPs regarding the remedial action will be given due consideration during the public comment period, as any other comment from the public would be considered.

Finally, regarding conflicts of interest, the PRPs are using consultants in the performance of the RI/FS for the Site. The EPA position regarding use of consultants by PRPs is included in "Revisions to the Interim Guidance on PRP Participation in Remedial Investigations and Feasibility Studies", OSWER Directive 9835.2A, February 7, 1989, page A-15, which states that "Any consultants having current EPA assignments as prime contractors or as subcontractors must obtain approval from their EPA Contract Officers before performing work for PRPs." This provision addresses a consultant's potential conflict of interest regarding work for both the EPA

and the PRP. Likewise, the Congress' Office of Technology Assessment (OTA) report referenced in your letter, "Contractor Use in Superfund" (OTA January 1989), page 35 – 36, discusses "contracting by the Superfund program" and potential conflicts regarding use of a contractor by both EPA and a PRP, not contracting by a PRP. Any consultant employed by a PRP is not expected to be independent of the PRP as they are paid by the PRP, however, regulatory oversight and acceptance of the work will ensure the adequacy of the RI/FS.

Sincerely,

John Meyer  
Deputy Associate Director  
Remedial Branch, Superfund Division (6SF-R)

cc: EPA OIG